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SUNMAJU SDN BHD v. TENG THIAM FOO & ORS

HIGH COURT MALAYA, KUALA LUMPUR
ARZIAH MOHAMED APANDI JC
[CIVIL SUIT NO: WA-23NCVC-34-05-2025]
8 AUGUST 2025

B

Abstract – *Mareva injunctions should not unduly interfere with a defendant's ability to conduct ordinary business. While Mareva orders preserve assets pending judgment, they do not provide security for claims or create an 'untouchable pot'. The courts must balance the defendant's reasonable business needs against the plaintiff's legitimate interests in asset preservation. The injunction prevents evasion of justice through improper asset dissipation, not legitimate business operation. Hence, variation, where necessary, ought to be allowed to prevent improper dissipation of assets while allowing business continuation.*

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CIVIL PROCEDURE: *Injunction – Mareva injunction – Application for variation – Tests – Whether variation serves interests of justice – Whether expenses claimed usually incurred or recurring – Whether expenses claimed legitimate, bona fide and reasonable – Whether payments proper in ordinary course of business – Whether variation sought to convert one form of asset into business operations generating ongoing value while meeting trade obligations*

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The application by Inter Marine Energy Sdn Bhd, the third defendant, in encl. 14 was for a variation of the *ex parte* order under encl. 7 and *ad interim* order under encl. 35. The third defendant operated a petroleum wholesale business that incurred substantial monthly costs, significantly exceeding RM50,000 limit. The application aimed to increase this to RM1,100,000 per month and to allow certain one-off payments.

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Held (allowing variation of *ad interim* order accordingly):

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(1) The test for variation is whether the variation serves the interests of justice, requiring applicants to demonstrate its appropriateness and to adduce necessary supporting evidence. The test requires considering objectively the overall justice of allowing payments, including the likelihood of future judgment being unsatisfied while acknowledging that frozen funds remain the defendant's property. Where the courts have found risk of dissipation justifying the original order, the courts invoke an objective scepticism to the variation applications, particularly where the applicants had been less than frank. However, this scepticism must not prevent legitimate business operations that maintain rather than dissipate value. (paras 9 & 10)

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(2) In an application to vary the amount permitted under an order for a *Mareva* injunction for living and ordinary expenses and legal expenses, it is incumbent upon the applicant to show that the debts/expenses

are: (i) those which the defendant usually incurs or are recurring; (ii) are legitimate, *bona fid*e and reasonable; and (iii) the purposes of the debts/expenses are not in conflict with the policy underlying the *Mareva* injunction, that is, to prevent the plaintiffs being cheated out of the proceeds of their action, should it be successful, by the defendant either transferring his assets abroad or dissipating his assets within the jurisdiction. (para 12)

(3) Business expenditure should be allowed even where illegality is alleged (*Iraqi Ministry of Defence and Others v. Arcepey Shipping Co SA and Another*). While courts will not enforce illegal contracts directly or indirectly, lifting *Mareva* injunctions to enable defendants to make payments they consider proper in the ordinary business course does not constitute enforcement of allegedly illicit transactions. The principle recognises that the defendants seeking in good faith to make payments they consider appropriate in the ordinary business course were not avoiding responsibilities to the plaintiffs; rather, they were conducting business as entitled. To prevent such payments would stretch *Mareva* jurisdiction beyond its original purpose, transforming it from a tool to prevent abuse into improper business interference. (paras 15 & 16)

(4a) The petroleum wholesale business inherently involved substantial monthly expenses for product purchases and transportation services-expenses that were not discretionary but essential to the business. Also, the consent order, permitting one-off payment to Pearl Petroleum, established both parties' recognition of the legitimate trading relationship and the necessity of these payments, thus undermining arguments that the currently sought monthly amounts were excessive or unreasonable. The payments did not represent attempts to dissipate assets abroad or place them beyond the court's reach; rather, they convert one form of asset (cash) into business operations generating ongoing value while meeting legitimate creditor claims. Preventing these payments would transform the *Mareva* order from an asset preservation mechanism into an instrument forcing business cessation, thereby diminishing the asset base available to satisfy any eventual judgment, while preventing the third defendant from conducting business as an ordinary petroleum wholesaler. (paras 18-20)

(4b) Payment of employees' salaries fall within core business expenses that courts would recognise as permissible under freezing orders. Preventing salary payments would breach employment obligations, potentially expose the third defendant to employment claims, and disrupt normal business operations, where directors received salaries for services rendered. The court thus allowed RM5,000 monthly salary payment as a legitimate business expense. (para 22)

(4c) Under s. 235 of the Companies Act 2016 ('CA'), companies must appoint secretaries. This expense fell clearly within acceptable parameters for ordinary business operations, as it was recurring, verified by documentation, legally required, and modest in amount. The court thus allowed RM500 monthly for company secretary. (para 23)

(4d) Reputable businessmen consider repayment of documented debts honourable even where questions exist about technical details. The repayment of verified debts recorded in audited accounts fell within ordinary business dealings – companies routinely repay director loans, reimbursements, or accumulated fees when cash flow permits. The timing, while noteworthy and warranting scrutiny, did not overcome the objective documentary evidence from independent auditors that this debt existed. The audited accounts titled the balance toward permitting repayment while maintaining overall supervision through the variation's safeguards. The second defendant was allowed to receive the one-time payment of RM53,423. (para 25)

(5) The third defendant had submitted a license application, demonstrating an intent to comply rather than to deliberately flout regulatory requirements. The court had not conducted a hearing on the regulatory interpretation issues, made no findings on the applicable legal regime, and had reached no conclusions regarding the third defendant's good faith or lack thereof in its business operations. Refusing the variation would shut down the third defendant's business entirely before any substantive adjudication, causing irreparable harm that could not be remedied if the third defendant ultimately succeeded on the licensing question or in the underlying proceedings. (paras 29 & 34)

Case(s) referred to:

American Cyanamid Co v. Ethicon Ltd (1975) AC 396 ***(refd)***

Cie Noga D'Importation Et D'Exportation SA v. Australia And New Zealand Banking Group Ltd [2006] EWHC 602 ***(refd)***

Halifax Plc v. Chandler (2001) EWCA Civ 1750 ***(refd)***

Iraqi Ministry Of Defence And Others v. Arcepey Shipping Co SA And Another (1977 I No. 1999) [1981] QB 65 ***(foll)***

Merong Mahawangsa Sdn Bhd & Anor v. Dato' Shazryl Eskay Abdullah [2015] 8 CLJ 212 FC ***(dist)***

Pharmmalaysia Bhd v. Dinesh Kumar Jashbhai Nagjibha Patel & Ors (No 2) [2005] 5 CLJ 50 HC ***(refd)***

Polly Peck International Plc v. Nadir (No 2) (1992) 4 All ER 769 ***(refd)***

Tan Keen Keong v. Tan Eng Hong Paper & Stationery Sdn Bhd & Ors And Other Appeals [2021] 2 CLJ 318 FC ***(dist)***

Thien Seng Chan Sdn Bhd v. Teguh Wiramas Sdn Bhd & Anor [2017] CLJU 1066; [2017] 1 LNS 1066 HC ***(refd)***

Legislation referred to:
Companies Act 2016, s. 235
Control of Supplies Act 1961, s. 16
Control of Supplies Regulations 1974, reg. 3, Schedule Part 1
Rules of Court 2012, O. 2 r. 3

For the plaintiff - Calvin Wong Wai Hou; M/s Chooi & Company
For the 1st defendant - Nicholas Navaron; M/s Varon Joyce
For the 2nd & 3rd defendants - Mathew Thomas Philip, Ivan Teng Jun Hong & Sadyalaxmi; M/s Thomas Philip

Reported by S Barathi

JUDGMENT

Arziah Mohamed Apandi JC:

Introduction

[1] This application concerns the *ad interim ex parte Mareva* injunction given on 4 June 2025.

[2] Enclosure 14 is the third defendant's application dated 30 May 2025 for a variation of the *ex parte* order dated 22 May 2025 under encl. 7 and *ad interim* order dated 4 June 2025 under encl. 35 ("third defendant's variation application").

[3] Having considered the submissions of both parties and the evidence, I allow the third defendant's application to vary para. 7 of the *ad interim* order dated 4 June 2025, subject to modifications as set out below.

[4] The third defendant operates a petroleum wholesale business that incurs substantial monthly costs, significantly exceeding the current RM50,000 limit. The application aims to increase this to RM1,100,000 per month and to allow certain one-off payments. This decision balances the plaintiff's legitimate interest in protecting assets with the third defendant's right to conduct normal business operations.

Preliminary Objection – Dismissed

[5] The third defendant's objection to the plaintiff's affidavits on language competency grounds fails. The objection rests solely on the second defendant's personal belief without contemporaneous evidence. The deponent affirmed that he understands Bahasa Malaysia, and his 28-year history directing a company that requires continuous dealings with Government agencies and oil companies objectively demonstrates his language competency.

[6] Under *Thien Seng Chan Sdn Bhd v. Teguh Wiramas Sdn Bhd & Anor* [2017] CLJU 1066; [2017] 1 LNS 1066; [2017] MLJU 1117, courts should not sustain preliminary objections on non-compliance grounds absent substantial miscarriage of justice or incurable prejudice. Even if technical

defects existed, O. 2 r. 3 of the Rules of Court 2012 (ROC 2012) applies where no real prejudice occurred, the third defendant had filed comprehensive replies demonstrating full understanding of the plaintiff's case. Therefore, the preliminary objection is dismissed.

Applicable Legal Principles

Mareva Injunctions And Ordinary Business Expenses

[7] The fundamental principle governing *Mareva* injunctions is that they should not unduly interfere with a defendant's ability to conduct ordinary business. As established in *Halifax Plc v. Chandler* (2001) EWCA Civ 1750:

> The purpose of a freezing injunction is not to interfere with the defendant's ordinary business or his ordinary way of life ... there can be no objection in principle to the defendant's dealing in the ordinary way with his business and with his other creditors.

[8] *Mareva* orders preserve assets pending judgment; they do not provide security for claims or create an "untouchable pot". As *Polly Peck International Plc v. Nadir (No 2)* (1992) 4 All ER 769 confirms, courts must balance defendants' reasonable business needs against plaintiff's legitimate interest in asset preservation. The injunction prevents evasion of justice through improper asset dissipation, not legitimate business operations. Where the current limit renders normal business continuation impossible, variation becomes necessary to prevent the interlocutory remedy from achieving what final judgment might not complete cessation of the defendants' enterprise.

Test For Variation

[9] *Cie Noga D'Importation Et D'Exportation SA v. Australia and New Zealand Banking Group Ltd* [2006] EWHC 602 (Comm) establishes the comprehensive test: whether the variation serves the interests of justice, requiring applicants to demonstrate its appropriateness and to adduce necessary supporting evidence. Courts must examine whether the variation is consistent with preventing the defendants from evading justice by disposing of assets outside the ordinary business course, while recognising that assets belong to the defendants and that injunctions should not become instruments of oppression.

[10] The test requires considering objectively the overall justice of allowing payments, including the likelihood of future judgment being unsatisfied, while acknowledging that frozen funds remain the defendant's property. Where courts have found risk of dissipation justifying the original order, the courts invoke an objective scepticism to the variation applications, particularly where applicants have been less than frank. Still, this scepticism must not prevent legitimate business operations that maintain rather than dissipate value.

Requirements For Business Expenses

[11] *Pharmmalaysia Bhd v. Dinesh Kumar Jashbhai Nagjibha Patel & Ors (No 2)* [2005] 5 CLJ 50 establishes that expenses must be: (i) usually incurred or recurring; (ii) legitimate, *bona fide*, and reasonable; and (iii) not in conflict with the *Mareva* fundamentals of preventing asset dissipation. Steven Gee QC's authoritative treatise "*Mareva Injunctions and Anton Piller Relief*" confirms that applicants must satisfy the court that proposed payments would not conflict with *Mareva* jurisdiction policy by providing details of transactions, exhibiting appropriate documents, and negating suggestions that the transactions are other than *bona fide*. The burden lies squarely on the defendants to demonstrate, by affidavit evidence, the amounts, reasons for payments, itemisation of the many expenses and disclosure of available assets subject to the injunction. This evidential framework ensures courts can properly assess whether requested variations fall within the ordinary course of business or represent attempts at improper asset dissipation.

The Third Defendant Needs To Pay Its Legitimate Debts And Other Expenses

[12] It is established that in an application to vary the amount permitted under an order for a *Mareva* injunction for living and ordinary expenses and legal expenses, it is incumbent upon the applicant to show that debts/expenses are:

(i) those which the defendant usually incurs or are recurring;

(ii) are legitimate, *bona fide*, and reasonable; and

(iii) the purposes of the debts/expenses are not in conflict with the policy underlying the *Mareva* injunction, that is, to prevent the plaintiff being cheated out of the proceeds of their action, should it be successful, by the defendant either transferring his assets abroad or dissipating his assets within the jurisdiction.

[13] In *PharmMalaysia* (*supra*), Justice Abdul Malik Ishak (as he then was) referred to and applied the literature/textbook entitled "*Mareva Injunctions and Anton Piller Relief*", 4th edn, by Steven Gee QC which states the following:

> *The general principle is that where a party seeks a variation to the injunction to enable a payment to be made, it is incumbent on that party to satisfy the court that the proposed payment would not be in conflict with the policy underlying the Mareva jurisdiction – A v. C (No 2) [1981] QB 961. Where the defendant is seeking the variation, it is usual for him to satisfy this requirement by swearing an affidavit deposing to the amount of the proposed payment, and the reason for making it. If the proposed payment is for a number of items, these should be identified. If the payment concerns a particular transaction between the defendant and the third party, then ordinarily the defendant will give some details of that transaction and exhibit*

A *any appropriate documents to negative any suggestion that the transaction is other than bona fide. Often the defendant will also disclose in his affidavit what assets he has subject to the injunction, although this is not invariably necessary.*

(emphasis added)

[14] The test for a variation application can be surmised from the decision B by the UK's King Bench in *Cie Noga* (*supra*) where the court held, at para. 9, as follows:

(i) The essential test is whether it is in the interests of justice to make the variation sought;

C (ii) Since the court has already determined that, in the absence of a freezing order, there is a real risk of dissipation sufficient to justify the making of an order it is for the Applicant to satisfy the court that it is appropriate make the variation sought and to adduce any evidence that is necessary to persuade the court that that is so;

D (iii) In determining whether or not to allow the variation proposed the court is concerned to examine whether to do so would be consistent with the policy that underpins the jurisdiction, namely that a defendant should be restrained from evading justice by disposing of assets otherwise than in the ordinary course of business with the result that any judgment goes unsatisfied; *Gangway Ltd v. Caledonian Park Investments (Jersey) Ltd* [2001] 2 Lloyd's Rep 715; *TTMI Ltd of England v. ASM Shipping Ltd of India* [2005] E EWHC 2666 (Comm).

(iv) The correct test is "to consider objectively the overall justice of allowing the payment to be made including the likely consequence of permitting it on the prospects of a future judgment being left unsatisfied, and bearing in mind that the assets belong to the defendant and that the F injunction is not intended to provide the Claimant with security for his claim or to create an untouchable pot which will be available to satisfy an eventual judgement": Gee, para 20.054;

(v) If the question is whether or not the *Mareva* should be varied so as to allow frozen monies to be used to fund a defence it may be necessary G to show that there are no other funds or sources of payment which should as a matter of objective fairness be used for that purpose in preference to the frozen funds. The same principle must apply if what is sought is to fund the giving of a recognizance in favour of another.

(vi) Because the court has already been satisfied of a risk of dissipation judges are entitled, on an application to vary, to have a healthy scepticism H about assertions made by the Applicant particularly where the Applicant, or those to whom his evidence or contentions relate, have been less than frank in dealing with the court or the Claimant.

I

The *Angel Bell* Principle – Allowing Business Operations Despite Alleged Illegality

[15] The seminal case *Iraqi Ministry Of Defence And Others v. Arcepey Shipping Co SA And Another* (1977 I No. 1999) [1981] QB 65 ("*Angel Bell*") establishes that business expenditure should be allowed even where illegality is alleged. At pp. 72 and 73 per Robert Goff J said:

> For these reasons I am unable to accept the submissions of the plaintiffs in the present case. There remains, however, the point that the interveners are seeking to recover a debt which the plaintiffs say is illegal and void as a moneylending transaction. Whatever may be the merits of the plaintiffs' submission, it is an issue which has yet to be resolved; and I have to consider whether it would be right to amend the present *Mareva* injunction to permit payment by the defendants of the interveners' claim in these circumstances. The plaintiffs submit that I should not do so, for to do so might be to enforce an illegal transaction. I do not think that this is right. No doubt the court will not enforce, directly or indirectly, an illegal contract; but by lifting the *Mareva* injunction in the present case to enable the defendants to repay to the interveners the loan they have received would not be to enforce the transaction, even indirectly. A reputable businessman who has received a loan from another person is likely to regard it as dishonourable, if not dishonest, not to repay that loan even if the enforcement of the loan is technically illegal by virtue of the Moneylenders Acts. All the interveners are asking is that the defendants should be free to repay such a loan if they think fit to do so, not that the loan transaction should be enforced. For a defendant to be free to repay a loan in such circumstances is not inconsistent with the policy underlying the *Mareva* jurisdiction. He is not in such circumstances seeking to avoid his responsibilities to the plaintiff if the latter should ultimately obtain a judgment; on the contrary, he is seeking in good faith to make payments which he considers he should make in the ordinary course of business. I cannot see that the *Mareva* jurisdiction should be allowed to prevent such a payment. To allow it to do so would be to stretch it beyond its original purpose so that instead of preventing abuse it would rather prevent businessmen conducting their businesses as they are entitled to do.

[16] Thus, while courts will not enforce illegal contracts directly or indirectly, lifting *Mareva* injunctions to enable defendants to make payments they consider proper in the ordinary business course does not constitute enforcement of allegedly illicit transactions. The principle recognises that defendants seeking in good faith to make payments they consider appropriate in the ordinary business course are not avoiding responsibilities to plaintiff; rather, they are conducting business as entitled. To prevent such payments would stretch *Mareva* jurisdiction beyond its original purpose, transforming it from a tool to prevent abuse into improper business interference.

[17] This principle applies directly when regulatory compliance issues remain unresolved. *Angel Bell* involved alleged illegality under moneylending legislation, where it was a regulatory regime question, yet the court allowed

variation. The key difference is between established, admitted illegality, where defendants seek court assistance to engage in illegal conduct (impermissible), and disputed legal interpretations, where defendants aim to continue operations in good faith pending resolution (permissible). When no final determination exists on regulatory requirements and defendants have taken steps indicating their intent to comply, courts should not issue *Mareva* injunctions that prejudge substantive regulatory issues by shutting down businesses before they can be appropriately decided. This maintains both the purpose of the *Mareva* jurisdiction and the defendants' rights to conduct business until final adjudication.

Analysis Of The Third Defendant's Needs

Pearl Petroleum Payments (RM979,655.95 Monthly) – Allowed RM300,000 Monthly As Variation

Evidence And Business Necessity

[18] The third defendant's invoices for March to May 2025 show payments to Pearl Petroleum averaging RM979,655.95 monthly (March: RM940,293.90; April: RM1,019,300.10; May: RM979,374.85). These represent documented recurring obligations to the third defendant's main supplier and transporter. These figures align with the third defendant's audited accounts, illustrating a consistent pattern of legitimate trading relationships rather than sporadic or questionable payments. The petroleum wholesale business inherently involves substantial monthly expenses for product purchases and transportation services – expenses that are not discretionary but essential to the business. Without the ability to pay suppliers, the business becomes unviable, supplier relationships break down, and the third defendant's commercial operations effectively cease thereby causing more harm than the *Mareva* order aims to prevent and destroying the very asset base that could satisfy any judgment in the plaintiff's favour.

Prior Judicial Recognition

[19] The consent order dated 11 June 2025 permitting one-off payment of RM203,063.58 to Pearl Petroleum for one week's invoices carries significant weight. This consent, reached between the parties and recorded by this court, establishes both parties' recognition of the legitimate trading relationship and the necessity of these payments. While the plaintiff made the consent on a without-prejudice basis and without admissions, the practical effect of consenting to a weekly payment of RM203,063.58 acknowledges the scale of ordinary operations, approximately RM812,254.32 monthly if extrapolated. This prior consent undermines arguments that the currently-sought monthly amounts are excessive or unreasonable, as parties previously agreed to payments supporting similar monthly averages. Courts should not ignore this commercial reality when assessing whether requested variations fall within the ordinary business course.

Application Of *Angel Bell* Principle

[20] Pearl Petroleum payments fall squarely within *Angel Bell*'s protection of ordinary business dealings. The third defendant seeks not to enforce any allegedly illegal transaction but merely to meet trade obligations in good faith-paying for petroleum products received from legitimate suppliers. These are precisely the circumstances *Angel Bell* contemplates: reputable businessmen meeting commercial obligations they consider proper regardless of technical legal questions. The payments do not represent attempts to dissipate assets abroad or place them beyond the court's reach; rather, they convert one form of asset (cash) into business operations generating ongoing value while meeting legitimate creditor claims. Preventing these payments would transform the *Mareva* order from an asset preservation mechanism into an instrument forcing business cessation, thereby diminishing the asset base available to satisfy any eventual judgment, while preventing the third defendant from conducting business as an ordinary petroleum wholesaler would.

Assessment And Conclusion

[21] Balancing all factors, including the documented invoices, business necessity, prior consent, *Angel Bell* principle, and the need for safeguards, I believe that payments to Pearl Petroleum should be up to RM300,000 per month. This amount reasonably reflects the demonstrated average of RM979,655.95 while establishing a clear cap to prevent substantial excesses. The cap prevents payments far beyond normal operations but still allows essential business activities. This approach balances fairness by avoiding improper dissipation while not forcing business closure before a thorough adjudication.

Salary Payments (RM10,000 Monthly To Second Defendant) – RM5,000 Allowed As Variation

[22] Salary payments represent fundamental business obligations that *Mareva* injunctions should not prevent. The second defendant's employment and RM10,000 monthly salary are documented in KWSP records, establishing this as a recurring, verified obligation rather than an unsupported claim. Payment of employee salaries falls within core business expenses that courts would recognise as permissible under freezing orders. Gee on *Commercial Injunctions* (6th edn) at para 12.021 confirms that such payments are generally permitted as ordinary business expenses. Critically, the second defendant already possesses RM16,000 monthly personal spending allowance under para. 6(a) of the *ad interim* order, meaning this salary payment does not increase her personal spending capacity but merely regularises a business obligation. This distinguishes the payment from concerns about personal asset dissipation: the funds discharge a corporate liability rather than augmenting personal consumption beyond already

A permitted levels. Preventing salary payments would breach employment obligations, potentially expose the third defendant to employment claims, and disrupt normal business operations, where directors receive salaries for services rendered. I allow the RM5,000 monthly salary payment as a legitimate business expense.

B *Company Secretary Fees (RM500 Monthly) – Allowed As Variation*

[23] Sistema Secretarial Services' statement of account shows RM1,531.60 total for January to June 2025 (average RM255.27 monthly), with the third defendant seeking RM500 monthly allowance. Under s. 235 of the
C Companies Act 2016 (CA 2016), companies must appoint secretaries as this is a statutory compliance requirement, not discretionary expenditure. The modest RM500 monthly amount (which actually exceeds the historical average, providing a reasonable buffer for fluctuations) represents the necessary corporate compliance expenditure that any operating company must incur. Courts should not force companies into statutory
D non-compliance by preventing them from paying for mandatory secretarial services. This expense falls clearly within acceptable parameters for ordinary business operations, as it is recurring, verified by documentation, legally required, and modest in amount. I allow RM500 monthly for company secretary fees.

E **[24]** This modest amount for necessary corporate compliance services represents ordinary business expense well within acceptable parameters.

One-time Payment To The Second Defendant (RM53,423) – Already Agreed

[25] The third defendant's audited financial statements for year ending
F 31 December 2023 record RM53,423 as "amount due to director", representing a debt independently verified by external auditors. While the plaintiff questions the nature, basis, and timing of this claimed debt (why it remained unpaid since 2023; why it suddenly became urgent post-injunction), the audited account provides substantial documentary evidence
G of a legitimate pre-existing obligation. *Angel Bell* principle applies: reputable businessmen consider repayment of documented debts honourable even where questions exist about technical details. The repayment of verified debts recorded in audited accounts falls within ordinary business dealings-companies routinely repay director loans, reimbursements, or accumulated
H fees when cash flow permits. The timing, while noteworthy and warranting scrutiny, does not overcome the objective documentary evidence from independent auditors that this debt exists. Courts applying such scepticism under *Cie Noga* must balance that scepticism against documented evidence; here, the audited accounts tilt the balance toward permitting repayment
I while maintaining overall supervision through the variation's safeguards. I allow the second defendant to receive the one-time payment of RM53,423.

[26] This sum represents a legitimate debt recorded in the third defendant's audited accounts, independently verified by auditors. The repayment of documented debts falls within the ordinary course of business.

Remaining Business Expenses

[27] The third defendant's routine expenses are approximately RM11,200 monthly: office rental RM6,300 (from August 2025), tax payments RM2,800, utilities and telephone RM200, printing RM270, accountant RM267 and EPF/SOCSO/EIS contributions RM1.358. These are recurring expenses for any ordinary business operations. The remaining items allowed to be varied are seen in this draft order dated 8 August 2025 below which had been approved by both parties:

DRAF

WA-23NCvC-34-05/2025

Encl No. 155

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NO. GUAMAN: WA-23NCvC-34-05/2025

ANTARA

SUNMAJU SDN BHD
(NO. SYARIKAT: 199701019348) ...PLAINTIF

DAN

1. TENG THIAM FOO
(NO. K/P.: 891113-14-6033)
2. CHAN HOOI LENG
(NO. K/P.: 900127-14-6028)
3. INTER MARINE ENERGY SDN BHD
(NO. SYARIKAT: 202101437773 (1444073-X)) ...DEFENDAN-DEFENDAN

DI HADAPAN PESURUHANJAYA PENGHAKIMAN ARZIAH BINTI MOHAMED APANDI

MAHKAMAH TERBUKA

PADA 8 OGOS 2025

DRAF PERINTAH
(Lampiran 14)

ATAS PERMOHONAN Defendan Ke-3 yang dinamakan di atas DAN SETELAH MEMBACA Notis Permohonan Defendan bertarikh 30.05.2025 dan Afidavit Sokongan yang diikrarkan oleh Chan Hooi Leng pada 30.05.2025 yang kesemua difailkan disini DAN SETELAH MENDENGAR Ira Biswas (Calvin Wong Wai Hou bersamanya), peguam bagi pihak Plaintif dan Mathew Thomas Philip (Ivan Teng Jun Hong bersamanya), peguam bagi Defendan Ke-3, MAKA ADALAH DIPERINTAHKAN bahawa:

1. Perenggan 7 Perintah Injunksi *Ad-Interim* bertarikh 4.6.2025 di bawah Lampiran 35 diubah seperti berikut: dan membelanjakan
   "7. *Defendan Ke-3 berhak untuk mengeluarkan dari akaun bank atau sumber lain, dan membelanjakan jumlah-jumlah wang seperti yang berikut yang mana identifi bank atau sumber hendak dimaklumkan terlebih dahulu oleh Defendan Ke-3 kepada peguamcara Plaintif:*

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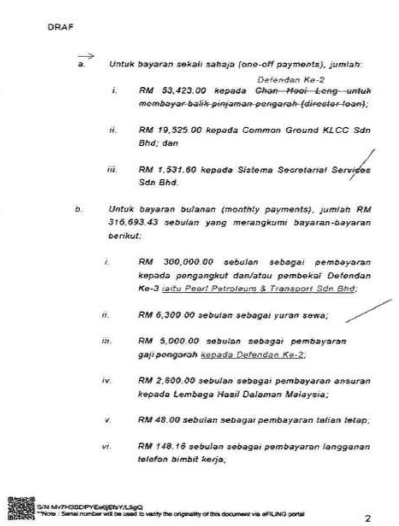

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a. *Untuk bayaran sekali sahaja (one-off payments), jumlah:*

Defendan Ke-2

i. *RM 53,423.00 kepada Chan Hooi Leng untuk membayar balik pinjaman pengarah (director loan);*

ii. *RM 19,525.00 kepada Common Ground KLCC Sdn Bhd; dan*

iii. *RM 1,531.60 kepada Sistema Secretarial Services Sdn Bhd.*

b. *Untuk bayaran bulanan (monthly payments), jumlah RM 316,693.43 sebulan yang merangkumi bayaran-bayaran berikut:*

i. *RM 300,000.00 sebulan sebagai pembayaran kepada pengangkut dan/atau pembekal Defendan Ke-3 iaitu Pearl Petroleum & Transport Sdn Bhd;*

ii. *RM 6,300.00 sebulan sebagai yuran sewa;*

iii. *RM 5,000.00 sebulan sebagai pembayaran gaji pengarah kepada Defendan Ke-2;*

iv. *RM 2,800.00 sebulan sebagai pembayaran ansuran kepada Lembaga Hasil Dalaman Malaysia;*

v. *RM 48.00 sebulan sebagai pembayaran talian tetap;*

vi. *RM 148.16 sebulan sebagai pembayaran langganan telefon bimbit kerja;*

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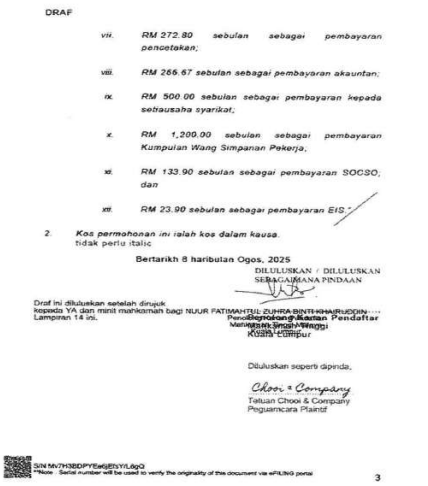

DRAF

vii. *RM 272.80 sebulan sebagai pembayaran pencetakan;*

viii. *RM 266.67 sebulan sebagai pembayaran akauntan;*

ix. *RM 500.00 sebulan sebagai pembayaran kepada setiausaha syarikat;*

x. *RM 1,200.00 sebulan sebagai pembayaran Kumpulan Wang Simpanan Pekerja;*

xi. *RM 133.90 sebulan sebagai pembayaran SOCSO; dan*

xii. *RM 23.90 sebulan sebagai pembayaran EIS."*

2. *Kos permohonan ini ialah kos dalam kausa.*
tidak perlu italic

Bertarikh 8 haribulan Ogos, 2025

DILULUSKAN / DILULUSKAN SEBAGAIMANA PINDAAN

Draf ini diluluskan setelah dirujuk kepada YA dan minit mahkamah bagi NUUR FATIMAHTUL ZUHRA BINTI KHAIRUDDIN ... Lampiran 14 ini.

Pendaftar
Mahkamah Tinggi
Kuala Lumpur

Diluluskan seperti dipinda,

Choo & Company
Tetuan Chooi & Company
Peguamcara Plaintif

S/N MV7H3SDPYEwEjEhYiJgQ
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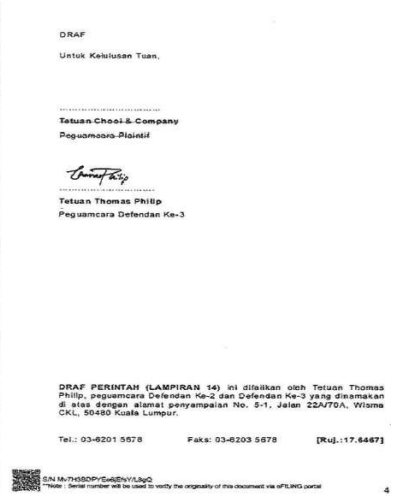

DRAF

Untuk Kelulusan Tuan,

.....
Tetuan Chooi & Company
Peguamcara Plaintif

.....
Tetuan Thomas Philip
Peguamcara Defendan Ke-3

DRAF PERINTAH (LAMPIRAN 14) ini difailkan oleh Tetuan Thomas Philip, peguamcara Defendan Ke-2 dan Defendan Ke-3 yang dinamakan di atas dengan alamat penyampaian No. 5-1, Jalan 22A/70A, Wisma CKL, 50480 Kuala Lumpur.

Tel.: 03-6201 5678 Faks: 03-6203 5678 [Ruj.:17.6467]

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Control Of Supplies Act 1961 Interpretation

The Licensing Controversy

[28] The plaintiff contends the third defendant operates illegally without a license under the Control of Supplies Act 1961 (CSA 1961). Reliance is made on the confirmation by the Ministry of Domestic Trade dated 16 July 2025 that the third defendant lacks the requisite license under the CSA 1961. The plaintiff argues s. 16 of the CSA 1961 prohibits wholesale selling of controlled articles without valid licenses, that reg. 3 of the Control of Supplies Regulations 1974 prohibits dealing in "scheduled articles" (including petrol and diesel per Part I of the Schedule) without licenses, and that courts cannot aid illegal operations under the *maxim ex turpi causa non oritur actio*. The plaintiff cites *Tan Keen Keong v. Tan Eng Hong Paper & Stationery Sdn Bhd & Ors And Other Appeals* [2021] 2 CLJ 318; [2021] 3 MLJ 914 for the principle that courts will never lend aid to persons founding causes of action on illegal acts, and *Merong Mahawangsa Sdn Bhd & Anor v. Dato' Shazryl Eskay Abdullah* [2015] 8 CLJ 212; [2015] 5 MLJ 619 holding courts are bound at all stages to take notice of illegality even if not pleaded and to refuse to enforce contracts tainted by illegality.

Distinguishing Alleged From Established Illegality

[29] The cases cited by the plaintiff involve well-established, admitted illegality where parties sought court assistance in enforcing or benefiting from clearly illegal conduct. These circumstances differ fundamentally from the present situation. Here, no final determination has been made on whether the third defendant's specific business model (wholesale distribution without storage at its own premises) requires CSA licensing or whether only the PDA licence is sufficient. The parties dispute the regulatory interpretation: whether CSA licensing applies to wholesale operations without storage, whether the CSA and PDA regimes serve different purposes with different requirements, and whether the third defendant's reliance on transporters rather than its own storage facilities affects licensing obligations. The third defendant has submitted a licence application (21 July 2025), demonstrating an intent to comply rather than to deliberately flout regulatory requirements. This court has not conducted a hearing on these regulatory interpretation issues, has made no findings on the applicable legal regime, and has reached no conclusions regarding the third defendant's good faith or lack thereof in its business operations.

Angel Bell Principle – The Critical Distinction

[30] *Angel Bell* involved precisely this situation, *ie*, the disputed legality of transactions under the Moneylenders Acts. The plaintiffs argued that allowing payment would enforce an illegal transaction; Robert Goff J rejected this argument, holding that lifting *Mareva* injunctions to enable defendants to make payments does not constitute enforcement of transactions even indirectly.

[31] His Lordship emphasised:

> A reputable businessman who has received a loan from another person is likely to regard it as dishonourable, if not dishonest, not to repay that loan even if the enforcement of the loan is technically illegal by virtue of the Moneylenders Acts. All the interveners are asking is that the defendants should be free to repay such a loan if they think fit to do so, not that the loan transaction should be enforced.

[32] This reasoning applies directly here: the third defendant seeks the freedom to conduct business as it considers proper, not the court's enforcement of allegedly illegal operations. The distinction between seeking to enforce illegal transactions (impermissible) and seeking to conduct business in good faith pending resolution of disputed regulatory questions (permissible) is fundamental to *Angel Bell*'s holding and applies fully to regulatory compliance disputes.

No Pre-Judgment Of Substantive Issues

[33] To refuse this variation on regulatory grounds would effectively pre-judge the substantive licensing dispute before it can be properly heard and determined. The plaintiff's claim encompasses breach of fiduciary duties, customer diversion, and misuse of confidential information. The licensing question is collateral to these core issues. It has not been subjected to full evidentiary hearing with expert testimony on regulatory interpretation.

[34] Refusing the variation would shut down the third defendant's business entirely before any substantive adjudication, causing irreparable harm that cannot be remedied if the third defendant ultimately succeeds on the licensing question or in the underlying proceedings. This exceeds the proper scope of interlocutory relief, which preserves the *status quo* pending trial rather than granting final relief at the interlocutory stage. As indicated in *American Cyanamid Co v. Ethicon Ltd* (1975) AC 396, interlocutory injunctions protect plaintiffs against injury for which damages cannot adequately compensate, but the converse applies: preventing ordinary business operations pending trial causes harm exceeding what interlocutory remedies should achieve and effectively grants final relief without final hearing.

A Safeguards Address Legitimate Concerns

[35] The plaintiff's legitimate concerns about asset dissipation are fully addressed through stringent conditions particularly the mandatory monthly reporting with invoices and bank statements, bank account disclosure. Strict payment limits capped at RM1,000,000 monthly for Pearl Petroleum, documentation requirements for all expenses, prohibitions on cash payments exceeding RM1,000, offshore payments, loans, and large asset purchases, and ongoing court supervision with liberty to apply on short notice.

[36] These safeguards maintain the *Mareva* order's core protection, which is preventing improper asset dissipation while allowing business continuation. The payments do not move assets beyond the court's reach but instead convert one asset form (cash) into business operations generating ongoing value while meeting trade obligations. A functioning business with supplier relationships, customer base, and operational cash flow better serves eventual judgment satisfaction than a defunct enterprise with destroyed commercial relationships and no ongoing revenue generation.

[37] I find the licensing dispute remains unresolved as a matter of regulatory interpretation requiring proper adjudication. *Angel Bell* principle allows business operations in good faith pending resolution of disputed legal questions. The third defendant's licence application demonstrates an intent to comply rather than deliberate illegality. No final determination justifies shutting down business at this interlocutory stage. The comprehensive safeguards adequately protect the plaintiff's legitimate interest in asset preservation while respecting the third defendant's right to conduct business pending final adjudication. Variation is consistent with *Mareva* jurisdiction policy, which seeks to prevent improper dissipation without destroying legitimate business operations.

Balancing And Conclusion

[38] *Cie Noga* requires considering objectively the overall justice, including the likelihood of judgment being unsatisfied if variation is granted, recognition that assets belong to the defendant, acknowledgement that injunctions are not intended to provide security, and the imperative that orders must not stifle ordinary business. The critical consideration is that the plaintiff's claim, if successful, seeks account of profits, damages, and injunctive relief – monetary remedies requiring an operational business to generate value. The plaintiff does not assert that these expenses would render any judgment unsatisfiable; instead, the plaintiff argues that the expenses are illegitimate.

[39] However, *Angel Bell* addresses precisely this concern, recognising that businessmen must be free to conduct operations in good faith pending resolution of legal disputes. A defunct business satisfies no judgment. It destroyed supplier relationships, lost customer base, and ceased operations leave no asset base for profit accounting or damage calculation. The safeguards protect against dissipation: mandatory reporting creates transparency, bank account disclosure enables monitoring, strict limits prevent excess, documentation requirements ensure legitimacy, and ongoing court supervision with liberty to apply permits rapid intervention if problems emerge.

[40] On balance, the interests of justice favour variation subject to stringent conditions that maintain *Mareva* protection while allowing business continuation. It is hereby ordered that para. 7 of the *ad interim* order is varied accordingly.